

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**



Advisory Opinion No. 305

On March 9, 2000, the Ethics Commission ("Commission") received a request for an advisory opinion whether a city officer's potential employment (by a company we refer to as "ABC") would violate the standards of conduct for city officials. As a result of its investigation, the Commission determined that the primary issue is whether a city officer's use of ABC's electric car contravenes the standards of conduct. The city officer also expressed a desire for an opinion from the Commission.

**I. Facts.**

The city officer is an avid proponent of the use of electric vehicles by government and believes that their use will cut costs and reduce pollution. The city officer uses the ABC electric car to promote the city government's and the public's awareness of the benefits of electric vehicles. ABC assembles the electric cars and offers them for sale in Honolulu.

The city officer first rode in an ABC electric car in a parade in December of 1999. After discussing it with ABC representatives, the city officer soon began test-driving an ABC car and continues to use the vehicle. The city officer uses the ABC car only during working hours and within the city as the electric car is not suitable for freeway travel. The city officer personally pays for the cost of parking the ABC car at a city garage, electric recharging, and automobile insurance. The city officer still uses a personal car to drive to and from work or when the city officer needs to travel on a highway. The use of the ABC car by the city officer has generated media coverage and allowed the city officer to further advance the public's awareness of electric cars. The city officer has testified in support of tax credits for electric cars before the State Legislature.

After test driving the ABC car at no charge, the city officer agreed to a lease agreement of \$150 per month, which was paid in January of this year. Apparently, ABC determined the \$150 amount to be the value of the vehicle to ABC. In February, ABC approached the city officer to become a spokesperson for ABC's electric cars in exchange for the free use of a car. The city officer would not be compensated for the sale of ABC cars, under the proposed offer from ABC. The city officer has delayed deciding whether to accept the offer until the Commission renders an opinion regarding the standards of conduct in this case. The city officer has not paid the lease fee since January, pending a decision to be ABC's spokesperson.

To date, there have been no items contained in the budget for the fiscal year 2000 - 2001 allowing for the purchase or lease of electric cars, but the city has two electric vehicles in its fleet. In an official role, the city officer asks department heads whether electric cars could save the city money. The city officer noted that any purchase by the city of electric vehicles would be based on a competitive procurement process in which neither the Council nor the city officer is involved.

**II. Whether the use of the ABC car violates the fair and equal treatment provision of the**

**ethics laws.**

Under the fair and equal treatment requirement, Sec. 11-104, Revised Charter of Honolulu (RCH):

Elected or appointed officers or employees shall not use their official positions to secure or grant special consideration, treatment, advantage, privilege or exemption to themselves or any person beyond that which is available to every other person.

As stated above, the city officer currently uses the ABC electric car during work hours and within the city. The city officer promotes the use of electric vehicles to city administrators involved in the use or purchase of vehicles. The city officer has become familiar with the ABC car and has been the subject of media coverage regarding the ABC car and electric vehicles generally.

These circumstances allow ABC to receive an advantage unavailable to other businesses that may compete with ABC to provide vehicles to the city. ABC is advantaged not only over other electric car vendors, but over other alternative fueled cars, such as those using propane gas, and even traditional gasoline powered vehicles. The city officer has broad discretion to influence the policy and practices of the city with regard to purchasing vehicles powered by alternative fuels. In a similar case, the Commission held that a city officer who allowed a product to be displayed in a government office violated the fair and equal treatment policy because it gave the salesperson an advantage no competitor had. Advisory Opinion, City Ethics Commission, dated September 27, 1996 (unpublished).

The improper advantage to ABC exists regardless whether the city officer accepts the use of the ABC car as a gift or as a result of becoming a spokesperson for the company.

We recommend that the city officer terminate the use of the ABC car because this practice allows ABC an advantage which other vendors are not permitted.<sup>1</sup>

**III. Whether the use of the ABC car violates the prohibition against the receipt of gifts.**

Sec. 11-102(a), RCH, states:

No elected or appointed officer or employee shall:

(a) Solicit or accept any gift, directly or indirectly, . . . under circumstances in which it can reasonably be inferred that the gift is intended to influence the officer or employee in the performance of such person's official duty.

Additionally, Sec. 3-8.8(a), Revised Ordinances of the City and County of Honolulu (ROH), applies this restriction to city officers:

No councilmember shall solicit, accept or receive, directly or indirectly, any gift . . . under circumstances in which it can be reasonably inferred that the gift is intended to influence the councilmember in the performance of the councilmembers official duties or is intended as a reward for any official action on the councilmember's part.

For our analysis, we assume that the city officer will follow our recommendation and no longer

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<sup>1</sup> Regarding penalties for violations of the standards of conduct, Sec 3-8.5, ROH, states:

The failure to comply with or any violation of the standards of conduct of this article or of Article XI of the revised charter shall be grounds for impeachment of elected officers and for the removal from office or from employment of all other officers and employees.

use the ABC car. However, there remains the question whether the city officer has received a gift from ABC of the use of the car for less than its fair rental value. The difference between the reasonable rental value and a lower amount paid by the city officer would constitute a gift. The Commission does not take a position on what amount constitutes the fair rental value of the ABC car.

As discussed earlier, the city officer has broad discretion to act in a manner to directly or indirectly promote the business success of ABC. The city officer has stated publicly the city officer's strong support for the use of electric cars for some government tasks and question city administrators as to their purchasing practices. ABC's gift of the use of the car creates a reasonable inference that the gift is intended to make the city officer more knowledgeable about and favorably disposed toward electric cars generally and ABC cars specifically. In turn, acceptance of the gift creates a reasonable inference that ABC intended to influence the performance of the city officer's duties, contrary to Sec. 11-102(a), RCH, and Sec. 3-8.8(a), ROH.

The Commission recommends that the city officer pay the reasonable rental value of the ABC car for the period of its use. This will correct the violation of the prohibition on receipt of gifts.<sup>2</sup>

**IV. Whether the role of spokesperson for ABC would be a prohibited business activity.**

Should the city officer become a spokesperson for ABC, several issues would arise regarding conflicts of interest between the city officer's business activities and the discharge of official duties. However, we will not examine these issues. We concluded that the city officer's use of the vehicle, even if the city officer is employed as the spokesperson for ABC, is inconsistent with the fair and equal treatment rule and recommended that the city officer discontinue the use of the ABC car. Therefore, the potential conflicts of interest regarding business activities need not be decided at this time.

Dated: April 28, 2000

LINDA A. REVILLA  
Chair, Ethics Commission

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<sup>2</sup> Sec. 3-8.8(f), ROH, states that "[a] violation of this section shall be punishable in accordance with Section 3-8.5."